

Message Text

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ORIGIN ACDA-10

INFO OCT-01 ARA-06 EUR-12 IO-13 ISO-00 ERDA-05 CIAE-00
H-01 INR-07 L-03 NSAE-00 OMB-01 PA-01 PM-04
PRS-01 SP-02 SS-15 USIA-06 TRSE-00 DODE-00 NSC-05
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ARA/RPP:JKING
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DOD:GHARLOW
PM:RTOYE
ACDA/IR:CFLOWERREE
ACDA/GC:MMAZEAU
L:JROHWER

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FM SECSTATE WASHDC
TO AMEMBASSY MEXICO PRIORITY
INFO AMEMBASSY BRASILIA
AMEMBASSY CARACAS
AMEMBASSY GEORGETOWN
AMEMBASSY MOSCOW
USMISSION GENEVA
USMISSION IAEA VIENNA

C O N F I D E N T I A L STATE 080379

E.O. 11652: GDS

TAGS: PARM, UR, BR, GY, VE, MX

SUBJECT: OPANAL APPROACH TO SOVIETS ON PROTOCOL II

REF: MEXICO 4584

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1. WHILE WE SUPPORT OPANAL EFFORTS TO ENCOURAGE SOVIET
ADHERENCE TO PROTOCOL II, WE ARE CONCERNED BY FORMULA
REPORTEDLY PROPOSED TO SOVIETS BY OPANAL SECRETARY GENERAL
GROS ESPIELL AS POSSIBLE BASIS FOR SUCH ADHERENCE (I.E.,
INTERPRETATIVE STATEMENT THAT ARTICLE I OF TREATY OF
TLATELOLCO PROHIBITS TRANSIT OF NUCLEAR WEAPONS THROUGH
THE TERRITORY ENCOMPASSED BY THE TREATY). PROPOSED

INTERPRETATION, AS REPORTED REFTEL, WOULD BE INCONSISTENT WITH POSITION ON TRANSIT ISSUE TAKEN BY STATES WHICH PARTICIPATED IN NEGOTIATION OF TREATY OF TLATELOLCO AS WELL AS BY US.

2. ALTHOUGH ARGENTINA HAD PROPOSED INCLUSION IN THE TREATY OF AN EXPLICIT PROHIBITION ON TRANSIT WITH NUCLEAR WEAPONS, MEMBERS OF THE FOURTH SESSION OF THE PREPARATORY COMMISSION FOR THE DENUCLEARIZATION OF LATIN AMERICA REJECTED THAT PROPOSAL. THEY RECORDED IN THE FINAL ACT OF THAT SESSION THAT, IN THE CASE OF TRANSIT WITH NUCLEAR WEAPONS BY LATIN AMERICAN TREATY PARTIES, AN EXPLICIT BAN ON TRANSIT WAS UNNECESSARY BECAUSE ARTICLE I PROHIBITS "ANY FORM OF POSSESSION" BY SUCH STATES. IN THE CASE OF TRANSIT WITH NUCLEAR WEAPONS BY STATES OUTSIDE THE ZONE, THEY MAINTAINED THAT SUCH TRANSIT "MUST BE UNDERSTOOD TO BE GOVERNED BY THE PRINCIPLES AND RULES OF INTERNATIONAL LAW; ACCORDING TO THESE PRINCIPLES AND RULES IT IS FOR THE TERRITORIAL STATE, IN THE FREE EXERCISE OF ITS SOVEREIGNTY, TO GRANT OR DENY PERMISSION FOR SUCH TRANSIT IN EACH INDIVIDUAL CASE..."

3. INTERPRETATION THAT TRANSIT RIGHTS ARE NOT AFFECTED BY TREATY OF TLATELOLCO WAS ESSENTIAL TO US ADHERENCE TO PROTOCOL II. IN THE US STATEMENT OF UNDERSTANDINGS, WHICH WAS MADE AN INTEGRAL PART OF OUR INSTRUMENT OF RATIFICATION OF PROTOCOL II, WE TOOK NOTE OF THE "PREPARATORY COMMISSION'S INTERPRETATION OF THE TREATY, AS SET FORTH IN THE FINAL ACT, THAT, GOVERNED BY THE PRINCIPLES AND RULES OF INTERNATIONAL LAW, EACH OF THE CONTRACTING PARTIES RETAINS EXCLUSIVE POWER AND LEGAL COMPETENCE, UNAFFECTED BY THE TERMS OF THE TREATY, TO GRANT OR DENY NON-CONTRACTING PARTIES TRANSIT AND TRANSPORT PRIVILEGES."

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CIPLES AND RULES OF INTERNATIONAL LAW, EACH OF THE CONTRACTING PARTIES RETAINS EXCLUSIVE POWER AND LEGAL COMPETENCE, UNAFFECTED BY THE TERMS OF THE TREATY, TO GRANT OR DENY NON-CONTRACTING PARTIES TRANSIT AND TRANSPORT PRIVILEGES."

4. IN VIEW OF IMPORTANCE WE ATTACH TO TRANSIT ISSUE, WE WOULD NOT WANT SOVIETS TO BE ENCOURAGED TO MAKE AN INTERPRETATIVE STATEMENT INCONSISTENT WITH OUR OWN. ACCORDINGLY, CHARGE SHOULD USE OPPORTUNITY OF APRIL 12 APPOINTMENT WITH GROS ESPIELL TO SEEK CLARIFICATION OF THE NATURE OF PROPOSAL MADE TO SOVIETS ON PROTOCOL II ADHERENCE. DRAWING ON PRECEDING PARAS AS APPROPRIATE, CHARGE SHOULD REITERATE US VIEWS ON TRANSIT ISSUE AND EMPHASIZE THAT ANY SOVIET INTERPRETATIVE STATEMENT SHOULD NOT BE INCOMPATIBLE WITH POSITION TAKEN IN FINAL ACT AND US STATEMENT.

5. RE PARA FIVE REFTEL, CHARGE MAY TELL GROS ESPIELL

THAT REVIEW OF USG POSITION ON PROTOCOL I IS STILL
UNDERWAY AND THAT WE CANNOT PREDICT WHETHER WE WILL
HAVE ANYTHING ADDITIONAL TO REPORT AT CARACAS MEETING.

VANCE

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